

REMARKS/ARGUMENTS

Claims 1-20 were examined. Applicants gratefully acknowledge the indicated allowability of dependent claim 7. The claims have been amended and canceled as noted above. Reexamination and reconsideration of the claims, as amended, are respectfully requested.

Applicants note that the Information Disclosure Statement filed on January 16, 2004, contained only three pages of the 1449 listings. Those three pages included all of the intended references. Applicants apologize for the confusion over the page numbering.

Claim 8 was rejected for indefiniteness for lack of antecedent basis. This error has been corrected by amending claim 8 to recite the "one elongate linear flexible element" as set forth in independent claim 1.

Turning now to the substantive rejections, claims 1-3, 8, 9, and 16 were rejected as being anticipated by U.S. Patent No. 5,256,132, to Snyders. Such rejections are traversed in part and overcome in part.

The device described by Snyders is distinct from that claimed in the present application. Snyders discloses an active cardiac assist device comprising a cup-like member which may be placed over the heart and inflated and deflated to compress the heart and assist in cardiac pumping. The Snyders device is not a linear flexible element, and there is no teaching in the patent that the device would be introduced into "a pericardial space" as required by claim 1 herein. Applicants note that the pericardial space is potential space between the epicardium of the heart and the inner wall of the pericardium. The teachings of Snyders is entirely silent as to where the "cardiac assist envelope" is introduced, and the Examiner has not pointed to any teaching in Snyders or elsewhere that such a pumping device would be placed inside the pericardium. Thus, it is believed that no showing of anticipation has been made.

For these reasons, Applicants believe that claim 1, even prior to the amendment, distinguish the teachings of Snyders.

In an effort to expedite prosecution of the subject application, however, Applicants have amended independent claim 1 in two ways. First, the nature of the linear flexible element is further defined as "elongate." Thus, the cup-like structure of Snyders is further distinguished by the "elongate linear flexible element" of the present invention. Second, the limitations previously set forth in dependent claim 2 have been introduced to independent claim 1, i.e., that the elongate linear flexible element is introduced into the pericardial space through an access point so that the element "advances along a helical path which encircles the heart as the element is introduced." The cup-shaped envelope of Snyders is incapable of following a helical path as it is introduced over the heart, regardless of whether it is over the pericardium or beneath the pericardium. The Examiner had rejected prior dependent claim 2, relying on "a portion of element 10, strips 12, form a helical configuration encircling the heart, column 2, lines 63-68." Such reliance is misplaced.

While the strips 12 are said to optionally "include encircling or helical strips so the body can assume the necessary confirmation after insertion," nowhere does Snyders ever suggest that these elements begin as linear flexible elements which later assume a helical configuration as they are advanced along a helical path which encircles the heart. Snyders, in contrast, suggests only that the longitudinal elements 12 as illustrated, could optionally be helical elements which are enveloped in the cup-like pumping structure. It is never suggested that the elements begin straight and assume a helical configuration during insertion.

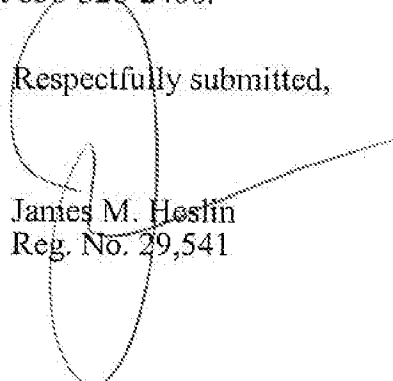
For these reasons, Applicants believe that independent claim 1, as amended, clearly and unambiguously distinguishes over the teachings of Snyders. For these reasons, Applicants believe that independent claim 1, as well as claims 3-20 dependent thereon, are now in condition for allowance.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,


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